

No. 15037

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United States  
Court of Appeals  
for the Ninth Circuit

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LEONARD CRUZ-SANCHEZ,

Appellant,

vs.

ROBERT ROBINSON, Officer in Charge, Immigration and Naturalization Service, Los Angeles, California, and MERRIL O'TOOLE, Regional Commissioner, San Pedro, California,

Appellees.

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Transcript of Record

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Appeal from the United States District Court for the  
Southern District of California,  
Central Division.

FILED

JUL -6 1956



No. 15037

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

Attorney for Appellant:

RICHARD R. CODY, ESQ.,  
408 South Spring Street,  
Los Angeles 13, California.

Attorney for Appellee:

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant United States Attorney,  
Chief Civil Division;

EDWIN H. ARMSTRONG,  
Assistant United States Attorney,  
600 Federal Building,  
Los Angeles 12, California.





United States District Court, Southern District  
of California, Central Division

Civil No. 18554-WM

LEONARD CRUZ-SANCHEZ,

Petitioner,

vs.

ALBERT DEL GUERCIO, Officer in Charge, Im-  
migration & Naturalization Service, Los An-  
geles, California; MERRIL O'TOOLE, Re-  
gional Commissioner, San Pedro, California,

Respondents.

PETITION FOR WRIT OF  
HABEAS CORPUS

To the Honorable United States District Court for  
the Southern District of California, Central  
Division:

The petition of Leonard Cruz-Sanchez respect-  
fully shows:

1. Petitioner makes application herein for a writ of habeas corpus in that he is unlawfully detained and restrained of his liberty by the said Albert Del Guercio, respondent, and is now in the custody of the said Albert Del Guercio, as Officer in Charge of the Immigration and Naturalization Service, Los Angeles, California, at 458 South Spring Street, Los Angeles, California.

2. The cause or pretext of such detention and restraint is an order of Deportation issued by or

through the respondent herein, the said Albert Del Guercio, under which your petitioner fears that he will be deported from the United States without due process of law. [2\*]

3. Said detention and restraint is unlawful in that the said Order of Deportation was issued without a fair hearing in accordance with the Constitution of the United States.

4. Your petitioner herein is informed and believes and therefore alleges that all administrative procedures and remedies have been exhausted and that unless this Honorable Court take jurisdiction of this case, he will be deprived of the right to have this case reviewed by this Honorable Court.

5. No other application for this writ has heretofore been made to any other Court or judge.

6. That there has not been time for an examination of the record in this case because your petitioner herein did not receive notice of his impending deportation until August 10, 1955; that within this time, your petitioner has been unable to secure or retain Counsel for the purposes of examining the record or file in this case; that your petitioner was able to retain Counsel on August 11, 1955, and did retain Richard R. Cody, Attorney at Law, to represent him in this matter; that said attorney has not had time to examine the record or file in this case.

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\*Page numbering appearing at foot of page of original Certified Transcript of Record.

Wherefore, petitioner prays that a writ of habeas corpus issue herein directed to the said Albert Del Guercio, commanding him to produce the body of the petitioner, Leonard Cruz-Sanchez, before this Court at a time and place to be specified in said writ, to the end that this Court may inquire into the cause of the petitioner's detention, and that the petitioner be ordered discharged from the detention and restraint aforesaid.

/s/ LEONARD CRUZ-SANCHEZ,

By /s/ RICHARD R. CODY,

His Attorney.

Duly verified.

[Endorsed]: Filed August 15, 1955. [3]

---

[Title of District Court and Cause.]

### ORDER TO SHOW CAUSE

Upon the verified petition, and exhibits attached, of Leonard Cruz-Sanchez for issuance of a writ of habeas corpus, it is

Ordered, that the respondent, Albert Del Guercio, show cause before this Court, at Los Angeles, California, on September 6, 1955, at 11 o'clock a.m., why a writ of habeas corpus should not issue herein as prayed for in said petition; and it is further

Ordered, that the petitioner be retained within this district until further order of this Court; and it is further

Ordered, that service of this order to show cause together with a copy of the verified petition, and exhibits attached, on respondents, Albert Del Guerzio, on or before August 17, 1955, at 5 o'clock p.m., be deemed sufficient service.

Dated: August 15, 1955.

/s/ W. M. BYRNE,

United States District Judge.

[Endorsed]: Filed August 15, 1955. [5]

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[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE AND  
ANSWER TO PETITION FOR WRIT OF  
HABEAS CORPUS

Comes now the respondents above named, by and through their attorneys, Laughlin E. Waters, United States Attorney; Max F. Deutz, and Edwin H. Armstrong, Assistant United States Attorneys, and making their answer to the Petition for Writ of Habeas Corpus, and for their return to the Order to Show Cause issued on the 15th day of August, 1955, by the Honorable William M. Byrne, District Judge, admit, deny and allege as follows:

I.

In answer to paragraph 1 of petition, respondents admit that petitioner is being detained by Robert

H. Robinson, Acting Officer in Charge, Immigration and Naturalization Service, Los Angeles, California, but except as specifically admitted, deny each and every allegation therein contained in said paragraph. [6]

II.

In answer to paragraph 2 of petition, respondents admit that the detention and restraint is an order of deportation and, except as expressly admitted, deny each and every allegation contained in said paragraph.

III.

In answer to paragraph 3 of petition, respondents deny generally and specifically each and every allegation therein contained.

IV.

In answer to paragraph 4 of petition, respondents admit each and every allegation therein contained.

V.

In answer to paragraph 5, respondents have no information upon which to base a belief as to the truth of the allegations there contained and upon that ground deny generally and specifically each and every allegation therein contained.

VI.

In answer to paragraph 6 of petition, respondents allege that they have no information upon which to base a belief as to the truth of the matter



therein stated, and upon said ground deny generally and specifically each and every allegation therein contained.

For a Further, Separate and Affirmative Defense to Said Petition, Respondents Allege:

I.

That petitioner has been accorded a full and fair hearing in conformity with law to determine his rights to be and remain in the United States. There is attached hereto, as part of this return, marked Exhibit A, a certified record of the Immigration and Naturalization Service, Department of Justice, relating to [7] the petitioner, containing a complete record of the deportation proceedings before the Immigration and Naturalization Service and the orders of the Special Inquiry Officer and the Board of Immigration Appeals.

II.

There is attached hereto an Affidavit of Robert H. Robinson, Acting Officer in Charge, Immigration and Naturalization Service, Los Angeles, California, marked Exhibit B, which affidavit shows that the person now detaining the petitioner herein is the said Robert H. Robinson and is no longer Albert Del Guercio.

Wherefore, respondents pray that petition for writ of habeas corpus filed herein be denied, and that the order to show cause as heretofore issued

be discharged, and for such other and further relief as the Court deems just and proper in the premises.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant U. S. Attorney,  
Chief of Civil Division;

EDWIN H. ARMSTRONG,  
Assistant U. S. Attorney;

/s/ EDWIN H. ARMSTRONG,  
Attorneys for Respondents.

## EXHIBIT A

United States of America  
Department of Justice  
Immigration and Naturalization Service  
Los Angeles, California

August 17, 1955.

## CERTIFICATION

By virtue of the authority vested in me by Title 8, Code of Federal Regulations, Section 2.1, a regulation issued by the Attorney General pursuant to Section 103 of the Immigration and Nationality Act,

I hereby certify that the annexed documents are originals, or copies thereof, from the records of the

## Exhibit A—(Continued)

said Immigration and Naturalization Service, Department of Justice, relating to Leonard Cruz-Sanchez, aka Leonard M. Cruz, File No. T-1497289, of which the Attorney General is the legal custodian by virtue of Section 103 of the Immigration and Nationality Act.

In Witness Whereof I have hereunto set my hand and caused the seal of the Department of Justice, Immigration and Naturalization Service, to be affixed, on the day and year first above written.

[Seal]     /s/ ROBERT H. ROBINSON,  
Acting Officer in Charge, Immigration and Naturalization Service, Los Angeles, California. [9]

T-1497289 DDP G

August 17, 1955.

Chairman, Board of Immigration Appeals,  
Washington, D. C.,

Acting Officer in Charge, Los Angeles 13, Calif.

Leonard Cruz-Sanchez aka Leonard M. Cruz.

Forwarded herewith for your consideration is copy of a motion to reopen the above case submitted by Boyd H. Reynolds. The subject alien is in detention and deportation may be imminent. A stay of deportation has been denied but a petition for a



Exhibit A—(Continued)

writ of habeas corpus has been filed in the U. S. District Court, Southern District of California.

The original administrative record must be retained here in connection with the Court action. We are accordingly forwarding herewith a complete copy of the record including copies of all exhibits. Enc. [10]

Boyd H. Reynolds

Counselor on

Immigration and Naturalization

Member Mississippi and American Bar Association

Suite 214, Douglas Bldg.

257 South Spring Street

Los Angeles 12, California

MAdison 5-2598

August 10, 1955.

In Answering Please Refer to No. 4/224.

Registered Mail—Special Delivery—

Return Receipt Requested

Officer in Charge,

Immigration and Naturalization Service,

Los Angeles, California.

Re: Leonard Cruz-Sanchez aka

Leonard M. Cruz,

Your File T1 497 289 and

1300/128823

## Exhibit A—(Continued)

Sir:

Enclosed please find Motion to Reopen, in triplicate, in the case of the above named together with Money Order in the amount of \$25.00.

Sincerely,

/s/ BOYD H. REYNOLDS.

BHR/aa [11]

In Re:

LEONARD CRUZ-SANCHEZ, Also Known as  
LEONARD M. CRUZ.

File Number T1 497 289 and  
Los Angeles (1300/128823)

## MOTION TO REOPEN

Chairman, Board of Immigration Appeals,  
Washington, D. C.

Comes now Leonard Cruz-Sanchez, also known as Leonard M. Cruz, through his Attorney Boyd H. Reynolds, and moves that his hearing under deportation proceedings be reopened for the purpose of showing the following:

1. That he is not subject to deportation under Sections 13 and 14 of the Immigration Act of 1924 in that he was not in possession of a valid immigration visa at the time of his last entry in Calexico, California, about March, 1950;

Exhibit A—(Continued)

2. That he was not required to present such immigration visa for the reason that he was a legal resident of the United States and was only in Mexico for a few hours at the time of his last entry in March, 1950;

3. To show that he had been a legal resident of the United States since his entry at El Paso, Texas, on January 11, 1933;

4. To show that he comes within Section 405 of Public Law 414 the Savings Clause in that deportation proceedings were instituted prior to the effective date of Public Law 414.

5. To apply for the discretionary relief in advance vested in the Attorney General for the exercise of the Seventh Proviso of the Immigration Act of 1917;

6. To show that he has been a continuous resident of the United States since January 11, 1933, and also that his mother is a permanent resident of the United States and that he has thirteen brothers and sisters who are native-born citizens of the United States;

7. To show that the hearings granted him under deportation proceedings in 1952 and 1953 were unfair in that no attempt was made to verify his lawful entry.

Evidence: Photostatic copy of document showing legal entry into the United States on January 11, 1933.

## Exhibit A—(Continued)

Wherefore, it is respectfully requested that the hearing be reopened for the purposes above stated.

/s/ BOYD H. REYNOLDS,  
Counselor.

Subscribed and sworn to before me at Los Angeles, California, this 10th day of August, 1955.

[Seal] /s/ ALICE R. APODACA,  
Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires March 27, 1957. [12]

At Paso, Tex.

Petronilo Cruz 46 m m  
Scar Left cheek 5'3"  
Emila Martinez de Cruz 5'2" mole over left eyebrow  
Leonardo Cruz Infant  
m 1 month

The above admitted by  
the Department Exh  
Returning Rec

4997

Ass. by 12

Santos Orta 18 m  
Agustina Cruz 16 f  
Lilia Orta 16 f  
Eva Cruz 13 f  
Maria Luisa Orta 13 f  
Norberto Orta 11 m  
Adam Cruz 11 m  
Maria Beatriz Cruz 9 f  
Esperanza Cruz 8 f  
Virginia Cruz 6 f  
Elena Cruz 4 f  
El Encarnacion 2 m

(12)  
all born  
in various  
places in  
Arizona  
B.B. 28316  
G.C.  
Indus





Exhibit A—(Continued)

United States of America  
Department of Justice  
Los Angeles, California

WARRANT—DEPORTATION OF ALIEN

No. T1 497 289

To: District Enforcement Officer,  
Los Angeles, California.

Or to any Officer or Employee of the United States Immigration and Naturalization Service.

Whereas, after due hearing before an authorized immigrant inspector, and upon the basis thereof, an order has been duly made that the alien, Leonard Cruz-Sanchez, who entered the United States at Calexico, California, on or about March, 1950, is subject to deportation under the following provisions of the laws of the United States, to wit:

The Immigration Act of May 26, 1924, in that, at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulation made thereunder.

The Act of February 5, 1917, in that on or after May 1, 1917, he has been sentenced to imprisonment for a term of one year or more because of conviction in this country of a crime

## Exhibit A—(Continued)

involving moral turpitude committed within five years after entry, to wit: Burglary, 2nd degree and Grand Theft.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his direction, do hereby command you to take into custody and deport the said alien pursuant to law, at the expenses of the

Appropriation, "Salaries and Expenses Immigration and Naturalization Service, 1954," including the expenses of an attendant if necessary.

For so doing this shall be your sufficient warrant.

Witness my hand and seal this 13th day of August, 1953.

/s/ H. R. LANDON,  
District Director. [14]

U. S. Department of Justice  
Board of Immigration Appeals

July 16, 1953.

## DECISION

File: T1 497 289—Los Angeles (1300-128823).

In re: Leonard Cruz-Sanchez aka Leonard M. Cruz,  
in Deportation Proceedings.



Exhibit A—(Continued)

In Behalf of Respondent: Mrs. Hope Borys (sister), 416 Del Norte Street, Los Angeles, California.

Charges:

Warrant:

Act of 1924—No immigration visa.

Act of 1917—Convicted of crime and sentenced to imprisonment for one year within five years after entry—Burglary, 2nd degree and grand theft.

Lodged: None.

Application: Termination of proceedings.

This case is before us on appeal from an order entered by the Hearing Officer on March 5, 1953, directing that the alien be deported from the United States on the charges contained in the warrant of arrest.

The respondent, a 20-year-old single male, a native and citizen of Mexico, last entered the United States at the port of Calexico, California, about March, 1950, after a short visit to Mexico. He was not in possession of an immigration visa. He testified that when he was a few months old, he was lawfully admitted to the United States for permanent residence in 1933 and has resided continuously in this country since. On May 9, 1952, the re-

## Exhibit A—(Continued)

spondent was convicted in the Superior Court of the State of California, in and for the County of Madera, upon his plea of guilty, of the crimes of Burglary in the Second Degree and Grand Theft committed on or about March 21, 1952. He was sentenced by the Court to imprisonment in the State Prison for the term prescribed by law for the aforesaid crimes, the sentences to be served consecutively. He is presently serving these sentences. The record shows that the length of the sentences is one to fifteen years and one to ten years. It is concluded from the evidence of record that the respondent is subject to deportation on the charges contained in the warrant of arrest.

The record reflects that the respondent was also convicted in Madera, California, in 1951, for Malicious Mischief and was sentenced to 30 days in the County Jail. [15]

Since the respondent is subject to deportation on a ground specified in Section 19(d) of the Immigration Act of 1917, he is not eligible for suspension of deportation.

Respondent's mother, Mrs. Emilia M. Cruz, and his sister, Mrs. Hope Borys, have written to us appealing in the respondent's behalf. We sympathize with their concern regarding respondent's immigration status. However, under applicable law we have no authority to correct his situation. Accordingly, we must dismiss the appeal.

Exhibit A—(Continued)

Order: It is ordered that the appeal be and the same is hereby dismissed.

/s/ THOS. S. FINNUCANE,  
Chairman. [16]

United States Department of Justice  
Immigration and Naturalization Service  
(1-15-53)

In the Matter of:

LEONARDO CRUZ-SANCHEZ

File No. T1 497 289-IB.

Date: March 23, 1953.

Notice of Appeal to the Board of Immigration  
Appeals, Department of Justice, Washington,  
D. C.

I hereby appeal from the decision in the above-entitled case dated March 11, 1953, and received by me on March 23, 1953.

[If an appeal is taken in a deportation proceeding, it is not perfected unless the form on the reverse of this notice is executed.]

I am filing herewith (or will file within the time set by the appropriate local immigration officer) written brief or other statement for

## Exhibit A—(Continued)

consideration by the Board of Immigration Appeals.

I do desire oral argument before the Board of Immigration Appeals in Washington, D. C.

Oral argument in any one case should not extend beyond fifteen (15) minutes, unless arrangements are made in advance of the hearing for additional time.

LEONARD CRUZ,

(Signature of Appellant or  
Representative.)

Box 128,

Chino, California.

(Address.)

I desire my sister, Mrs. Hope Borys, 416 Del Norte St., Los Angeles 65, Calif., to appear for me at time of oral argument.

/s/ LEONARD CRUZ.

Note: If the appellant is in detention or has been denied admission to the United States at the Canadian or Mexican border, he will not be released from detention nor permitted to enter the country to present oral argument to the Board. In such cases, if representation is desired, the appellant should arrange for someone to present his case to the Board of Immigration Appeals. Unless such arrangement is made at the time the appeal is taken, where representation is desired, the Board of Im-

Exhibit A—(Continued)

migration Appeals will not calendar the case for argument.

Record to BIA 3/31/53, file. [17]

[Reverse]

To Be Executed in All Appeals in  
Deportation Proceedings

\* \* \*

State briefly the reasons for this appeal:

1. At the time that I committed the crime for which I am now serving time in prison, I was only 19 years old, and did not know then what the consequences would be.

2. I have all my family and relatives in the U.S.A., none in Mexico. They are all citizens of the U.S.A.

3. I know nothing about Mexico, except what I've heard or read.

4. I have taken out all of my Naturalization Papers. The reason I am not a Naturalized Citizen is because I was not old enough to take the oath.

5. At the time of my conviction I asked if I could join the service instead of going to prison but I was denied.

/s/ LEONARD CRUZ.

## Exhibit A—(Continued)

United States Department of Justice  
Immigration and Naturalization Service  
458 So. Spring Street  
Los Angeles 13, California

March 11, 1953.

Please address reply to  
District Director, and refer to this  
File No. T1 497 289-IB.

Leonardo Cruz-Sanchez,  
c/o California State Prison,  
Chino, California.

Dear Sir:

The attached is a copy of the decision and order of Special Inquiry Officer in the case of Leonardo Cruz-Sanchez.

This order is final unless an appeal is taken to the Board of Immigration Appeals in Washington, D. C., and notice of appeal is filed within 10 days (not including Sundays and holidays) after receipt of this notice.

If an appeal is desired, the Notice of Appeal on Form I-290A, copies of which are enclosed, should be executed in duplicate and filed with this office. A brief or other written statement in support of your appeal may be submitted with the Notice of Appeal.



Exhibit A—(Continued)

You may also request oral argument before the Board of Immigration Appeals. However, an alien who is in detention or who has been denied admission at the Canadian or Mexican border will not be released from detention nor permitted to enter the country to present oral argument to the Board. Such an alien desiring representation must arrange to have someone appear on his behalf before the Board. Unless the name and address of the representative is forwarded with the Notice of Appeal, the Board of Immigration Appeals will not calendar the case for argument.

Any question which you may have will be answered by the local immigration office nearest your residence or at the address shown in the heading of this letter.

Sincerely yours,

.....

For the District Director.

Enclosures.

Registered Mail—Return Receipt Requested.

[Post office return receipt for Reg. Article No. 454412, dated March 16, 1956, signed by L. C. Sanchez, attached.] [18]

## Exhibit A—(Continued)

United States Department of Justice  
Immigration and Naturalization Service

March 5, 1953.

File: T1 497 289—Los Angeles.

In re: Leonard Cruz-Sanchez aka  
Leonard M. Cruz.

In Deportation Proceedings

In Behalf of Respondent: No one.

Charges:

Warrant:

Act of 1924—No immigration visa.

Act of 1917—Convicted of crime and sentenced to imprisonment for one year within five years after entry—Burglary, 2nd degree and grand theft.

Lodged: None.

Application: None.

Warrant of Arrest Served: July 21, 1952.

Discussion:

This record relates to a 20-year-old single male, a native and citizen of Mexico who last entered the United States at Calexico, California, about March, 1950. That entry has not been verified. The alien has stated that he entered to resume his residence



## Exhibit A—(Continued)

and to work although he was not in possession of an unexpired immigration visa. He has stated that he was lawfully admitted to the United States for permanent residence as a child of a few months of age in 1933. He has resided continuously in the United States since that time except for a brief visit of a few hours to Mexico prior to his last entry. The record does not contain evidence of his lawful entry for permanent residence as alleged. Accordingly, his entry was unlawful and he is subject to deportation under the Immigration Act of 1924 on the charge stated in the warrant of arrest.

The record shows that the alien pleaded guilty in the Superior Court of the State of California, in and for the County of Madera, to the crime of burglary in the second degree, committed about March 21, 1952, and to the crime of grand theft committed about March 21, 1952, and was sentenced by said Court on May 9, 1952, to imprisonment in the State Prison for the term prescribed by law for the aforesaid crimes. He is presently serving that sentence. On the basis of the aforementioned evidence, the alien is additionally subject to deportation under the Immigration Act of 1917 on the charge stated in the warrant of arrest.

The alien is single and has no close relatives residing outside of the United States. His mother, a brother and a sister reside in this country. He has no property or assets in the United States. As he has been found to be subject to [19] deportation on

## Exhibit A—(Continued)

a ground specified in Section 19(d) of the Immigration Act of 1917, he is statutorily ineligible for relief from deportation. He has not made an application for relief. He has specified Mexico as the country to which he desires to be deported in the event that such an order is issued.

## Findings of Fact as to Deportability:

(1) That the respondent is an alien, a native and citizen of Mexico;

(2) That the respondent last entered the United States at Calexico, California, about March, 1950;

(3) That the respondent entered; to work and to reside;

(4) That the respondent, at the time of his last entry, was not in possession of an unexpired immigration visa;

(5) That the respondent has never been lawfully admitted into the United States for permanent residence;

(6) That the respondent was convicted on his plea of guilty in the Superior Court of the State of California in and for the County of Madera for the crime of burglary, second degree, committed about March 21, 1952, and to the crime of grand theft committed about March 21, 1952, and by said Court on May 9, 1952, was sentenced to imprisonment to the

Exhibit A—(Continued)

State Prison for the term prescribed by law for those offenses.

Conclusions of Law as to Deportability:

(1) That under Sections 13 and 14 of the Immigration Act of 1924, the respondent is subject to deportation on the ground that at the time of entry he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder:

(2) That under Section 19 of the Immigration Act of 1917, the respondent is subject to deportation on the ground that he has been sentenced to imprisonment for a term of one year, or more, on or after May 1, 1917, because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: burglary, second degree, and grand theft.

Order:

It is ordered that the alien be deported from the United States in the manner provided by law on the charges contained in the warrant of arrest. [20]

I Certify that the foregoing is a correct transcript of my oral decision in this case.

/s/ WADE H. WESTMORELAND,  
Special Inquiry Officer.

## Exhibit A—(Continued)

I Certify the foregoing to be a correct transcript of the decision of the Special Inquiry Officer contained in the record in the above case.

/s/ GERTRUDE E. SAMUELS,  
Stenographer. [21]

United States Department of Justice  
Immigration and Naturalization Service  
458 South Spring Street  
Los Angeles 13, California

File No. T-1497289 (IB).

Date: February 18, 1953.

Leonardo Cruz-Sanchez,  
California State Prison,  
Chino, California.

Dear Sir:

Pursuant to the warrant of arrest served on July 21, 1952, you are advised to appear in the California State Prison, Chino, California, on March 5, 1953, at 9:00 a.m., for a hearing to enable you to show cause why you should not be deported from the United States in conformity with law.

You are charged with being an alien illegally in the United States and subject to deportation upon the following grounds:

The Act of February 5, 1917, in that on or after May 1, 1917, you have been sentenced to

Exhibit A—(Continued)

imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Burglary, 2nd degree, and Grand Theft; and

The Immigration Act of May 26, 1924, in that, at the time of entry, you were an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder.

At the hearing you may be represented by an attorney of other person or organization authorized to practice before the Immigration and Naturalization Service. Such representation shall be without expense to the Government. You should bring to the hearing any documents which you desire to have considered in connection with the case. If any document is in a foreign language you should bring the original and certified translation thereof.

Yours truly,

.....,

For the District Director.

## Exhibit A—(Continued)

United States Department of Justice  
Immigration and Naturalization Service  
458 South Spring Street  
Los Angeles 13, California

File No. T-1497289 (IB).

Date: December 30, 1952.

Leonardo Cruz-Sanchez,  
California State Prison,  
Chino, California.

Dear Sir:

Pursuant to the warrant of arrest served on July 21, 1952, you are advised to appear in the California State Prison, Chino, California, on January 26, 1953, at 10:30 a.m., for a hearing to enable you to show cause why you should not be deported from the United States in conformity with law.

You are charged with being an alien illegally in the United States and subject to deportation upon the following grounds:

The Immigration Act of May 26, 1924, in that, at the time of entry, you were an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder; and

The Act of February 5, 1917, in that on or after May 1, 1917, you have been sentenced to



Exhibit A—(Continued)

imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Burglary, 2nd degree, and Grand Theft.

At the hearing you may be represented by an attorney or other person or organization authorized to practice before the Immigration and Naturalization Service. Such representation shall be without expense to the Government. You should bring to the hearing any documents which you desire to have considered in connection with the case. If any document is in a foreign language you should bring the original and certified translation thereof.

Yours truly,

.....,

For the District Director.

sgb

Registered Mail. [23]

## Exhibit A—(Continued)

United States Department of Justice  
Immigration and Naturalization Service  
Los Angeles, California

Hearing in  
Deportation Proceedings  
In the Case of

Leonard Cruz-Sanchez,

File: T1 497 289.

Place: California Institute for Men, Chino, California.

Date: March 5, 1953.

Persons Present: Wade H. Westmoreland, Special Inquiry Officer; Leonard Cruz-Sanchez, Respondent.

Hearing recorded by dictaphone and conducted in the English language.

Special Inquiry Officer to Respondent:

Q. What is your name?

A. Leonard Sanchez Cruz.

Q. Will you stand and be sworn. Do you solemnly swear that your testimony in this proceeding will be the truth, the whole truth and nothing but the truth, so help you God?      A. Yes.

Q. I offer for your inspection a warrant No. 1300-128823, issued for the arrest of Leonard Cruz-Sanchez, by the District Director, United States



Exhibit A—(Continued)

Immigration and Naturalization Service, San Francisco, California, dated June 27, 1952, and endorsed to show service on the person named at San Quentin Prison on July 21, 1952. Was this warrant served on you as indicated?      A. Yes, sir.

By Special Inquiry Officer:

A copy of this warrant is entered in the record and marked Exhibit 1.

Special Inquiry Officer to Respondent:

Q. This warrant charges that you are in the United States in violation of law because you entered this country at Calexico, California, about March, 1950, at which time you were required to have an immigration visa because you entered to work or to live, but you did not have such a document, and after that entry you have been sentenced to imprisonment for a term of one year or more because of your conviction in this country of a crime of burglary, second degree, and Grand Theft, such crimes involve moral turpitude. Do you understand the nature of these two charges?

A. Yes, I do.

Q. The purpose of these proceedings is to determine your right to be and remain in the United States. Do you understand?

A. Yes, I do. [24]

Q. In these proceedings you have the right to be represented by counsel of your own selection and at

## Exhibit A—(Continued)

your own expense, which counsel may be an attorney-at-law or other person qualified to practice before officers of this Service. Do you desire to be represented in this proceedings?

A. Well, I don't have the money to hire a lawyer.

Q. Do I understand then that you do not want to be represented?

A. I would like to represent myself, you know, more or less, speak in my behalf.

Q. Are you ready to proceed with your hearing at this time?

A. Well, I think I have, you know, what I'd like to in full right now.

Q. During these proceedings you will be given an opportunity to examine all of the evidence against you, to present any evidence you may have in your own behalf and to question any witnesses presented by the government, do you understand?

A. Yes, sir.

Q. I now show you a record of a sworn statement made by Leonard Cruz-Sanchez to an immigration officer at San Quentin Prison, California, on June 4, 1952. Will you examine this statement and tell me whether you are the person who made it.

From off the record discussion you state that this is your statement and that it is correct except for the answer on the bottom of the first page where it says that you lived with your brother, Santos Orta,

Exhibit A—(Continued)

on Verdugo Road. That should have been with a sister at that address. Is that correct?

A. Yes.

Q. Otherwise this statement is true and correct?

A. Yes.

By Special Inquiry Officer:

This sworn statement is entered in evidence and marked Exhibit 2.

Special Inquiry Officer to Respondent:

Q. I next show you a summary of criminal record compiled by the Identification Department of the California State Prison, San Quentin, California, No. 668205, relating to Leonard M. Cruz. Will you examine this and state whether this record relates to you?      A. Yes, that's mine.

By Special Inquiry Officer:

This report is entered in evidence and marked Exhibit 3. [25]

Special Inquiry Officer to Respondent:

Q. I next show you an Information filed in the Superior Court of the State of California, in and for the County of Madera, on April 17, 1952, wherein the defendant Leonard M. Cruz was accused in Count One of Burglary and in Count Two

## Exhibit A—(Continued)

of Grand Theft. Will you examine this and state whether it relates to you?           A. Yes.

By Special Inquiry Officer:

This Information is entered in evidence and marked Exhibit 4.

Special Inquiry Officer to Respondent:

Q. I next show you an Abstract of Judgment entered in the Superior Court of the State of California, in and for the County of Madera, filed May 12, 1952, concerning Leonard M. Cruz, Defendant, showing that he pleaded guilty in that Court to the crimes of Burglary, second degree, and Grand Theft and was sentenced to imprisonment in the State Prison for the term prescribed by law on both—for both offenses, said sentences to run consecutively. Does this Judgment relate to you?

A. Yes, sir.

By Special Inquiry Officer:

This certified copy of the judgment is entered in evidence and marked Exhibit 5.

Special Inquiry Officer to Respondent:

Q. Have you ever been lawfully admitted to the United States for permanent residence?

A. Yes.

Q. When and where did that entry occur?

Exhibit A—(Continued)

A. I came over in 1933, when I first came over as a child with my parents.

Q. Where? A. At Juarez.

Q. You came over to El Paso, Texas?

A. Yes, and finally we came to Arizona, I mean I moved to Arizona.

Q. How old were you at that time?

A. Oh, about—the most about four months, I guess.

Q. Are you married? A. No, sir. [26]

Q. Do you have property or assets in the United States? A. No, sir.

Q. Do you have any further statement to make or any evidence to offer to show cause why you should not be deported from the United States?

A. Yes.

Q. Will you proceed.

A. Well, to start with at the time I did my time, I mean, I was only 19 years old and I didn't know more or less what I was getting into, I didn't have the knowledge of what could happen, then second is that, well, if I was to be deported and sent to Mexico, well, I never have been over there except for that time in '51, and, heck, I don't remember now what part of the year it was, but I only was over there for about four hours in Mexicali, and that's all I know about the place. I never have been over there and have relatives as far as I know and—well, if I was to be deported over there, it would be just like another country to me, I mean. I can't speak the language fluently, enough to get along,



## Exhibit A—(Continued)

but I mean, as far as, you know, as far as knowing it, I don't know very much about the place. I wouldn't have no place to go if I was deported. Well, I feel that—that I should be given another chance seeing that it's my first offense and I haven't had a bad record, I mean, until this last few years when I stay—now I am getting a little older and then I realize I made a mistake and I would like to, you know—I know I can correct myself in the future if given a chance. I would like to have that chance.

Q. Anything further?

A. Not at the present.

Q. If you are found to be subject to deportation and ordered deported, what country do you wish to specify as the country to which you shall be deported?

A. Well, I might as well go to Mexico, at least I know how to speak their language there.

By Special Inquiry Officer:

At this time I will orally state for the record my decision in your case as follows:

(At this point in the proceeding the Special Inquiry Officer dictated his oral decision which has been transcribed separately.)

Special Inquiry Officer to Respondent:

Q. Have you fully understood my decision in your case?

A. Yes, I have.

Exhibit A—(Continued)

Q. Do you desire to be served with a written copy of that decision?      A. Yes, I would. [27]

Special Inquiry Officer to Respondent:

You will be so served and your hearing is now closed.

\* \* \*

I certify that to the best of my knowledge and belief, the foregoing record is a true report of everything that was stated during the course of the hearing, including oaths administered, the warnings given to the alien and the witnesses, and the rulings on objections, except statements made off the record.

/s/ WADE H. WESTMORELAND,  
Special Inquiry Officer.

I certify the foregoing to be a true and correct transcript of the recording made of the testimony taken in this case.

/s/ BETTY M. HANSEN,  
Stenographer. [28]



## Exhibit A—(Continued)

Form I-200

U. S. Department of Justice

Immigration and Naturalization Service

## WARRANT FOR ARREST OF ALIEN

United States of America

Department of Justice

San Francisco, California

No. 1300-128823.

To: Chief, Investigations Section, San Francisco, California. Or to any Immigrant Inspector in the service of the United States.

Whereas, from evidence submitted to me, it appears that the alien Leonard Cruz-Sanchez, who entered this country at Calexico, California, by automobile about March, 1950, has been found in the United States in violation of the immigration laws thereof, and is subject to be taken into custody and deported pursuant to the following provisions of law, and for the following reasons, to wit:

The Immigration Act of May 26, 1924, in that, at the time of entry, he was an immigrant not in possession of a valid immigration visa and not exempted from the presentation thereof by said Act or regulations made thereunder.

The Act of February 5, 1917, in that on or after May 1, 1917, he has been sentenced to

Exhibit A—(Continued)

imprisonment for a term of one year or more because of conviction in this country of a crime involving moral turpitude committed within five years after entry, to wit: Burglary, second degree, and Grand Theft.

I, by virtue of the power and authority vested in me by the laws of the United States, hereby command you to take into custody the said alien and grant him a hearing to enable him to show cause why he should not be deported in conformity with law. The expenses of detention, hereunder, if necessary, are authorized payable from the appropriation "Salaries and Expenses, Immigration and Naturalization Service, 1952."

For so doing, this shall be your sufficient warrant. Witness my hand and seal this 27th day of June, 1952.

/s/ BRUCE G. BARBER,  
District Director,  
San Francisco District.

Port of San Francisco, Calif.

Date: July 21, 1952.

Warrant for Arrest of

Leonard Cruz-Sanchez,  
San Quentin.

Served by me at San Quentin, California, on July 21, 1952, at 9:00 a.m. Alien was then informed as to

## Exhibit A—(Continued)

cause of arrest, the conditions of release as provided therein, advised as to right of counsel and furnished with a copy of this warrant.

/s/ E. T. PRATHER,  
USINS Investigator.

Prison No. & Name: A-21253, Cruz, Leonard M.  
S. F. File No.

California State Prison,  
San Quentin, California.  
Date: 6/4/52.

Report of investigation of status of Leonard Cruz-Sanchez, conducted by E. T. Prather, USINS Investigator, at San Quentin, California.

Testimony recorded by E. T. Prather, USINS Investigator.

Examination conducted in the English language.  
Examining Inspector to:

Q. You are advised that I am a United States Immigrant Inspector and authorized by law to administer oaths in connection with the enforcement of the immigration laws. I desire to take a statement regarding your right to be and to remain in the United States. Any statement which you make should be voluntary and you are hereby warned that such a statement may be used against you. Are you

Exhibit A—(Continued)

willing to make this statement or answer questions under these conditions?      A. Yes.

Q. Do you swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

A. Yes.

[Stamped]: No previous record found—6/6/52, Fresno.

Searcher. [29A]

Prison name and number: Cruz, Leonard M.  
A-21253.

Date: 6/4/52.

San Quentin, California

My true name is: Leonard Cruz-Sanchez, alias Leonard Martinez Cruz: "Duke."

Date and Place of Birth: 11/6/32; Ciudad Juarez, Mexico (Chihuahua).

Nearest large city: El Paso, Texas.

Age: 19. Occupation: Laborer.

I am a citizen of: Mexico. I never was naturalized.

I never was married.

Father's name and birthplace: Petronilo Cruz, born in Mexico.

Father's present address: Deceased 1947, buried in Madera, California.

## Exhibit A—(Continued)

Mother's maiden name and birthplace: Emelia Sanchez, born in Mexico.

Mother's name and address: Mrs. Amelia M. Cruz, 709 Washington St., Madera, California.

My parents are citizens of Mexico and never have been naturalized.

Was either parent ever in U. S.? Yes.

I last entered the U. S. at Calexico from Mexicali, Mexico, on or about March, 1950.

Manner of entry: By car as a passenger with several other fellows, whose names I do not remember.<sup>1</sup>

I was going to join my mother.

For what purpose did you enter the U. S.? To resume residence and work.

I never had an immigration visa.

At the time of my last entry to the U. S. I could read the English language.

Prior to my last entry, I was inspected and admitted to the United States at El Paso, Texas, about 1933; with mother. [30]

---

<sup>1</sup>"The inspector at Calexico investigated us for about 4 hours (had us waiting). Afterwards he permitted us to return to Los Angeles where I lived with my brother Santos Orta, on Verdugo Road, Los Angeles, California."

Exhibit A—(Continued)

Prior to my last entry, I resided in the U. S. as follows: All my life but a few months.

I was deported from the U. S. at: No.

Names and addresses of nearest relatives living abroad: None known.

I never have received public charity.

I never have used narcotics.

I have no official documents to prove my citizenship. But my mother must have my birth and baptismal certificates showing I was born in Mexico.

I was baptized at Ciudad Juarez, Chihuahua, Mexico; as an infant.

Names and addresses of persons in country of citizenship who know of my nativity or foreign residence are: Sister: Beatrice Cruz; c/o 709 Washington Street, Madera, California.

Foreign schools attended: None.

Foreign churches attended: Catholic.

Present Crime

I entered San Quentin May 14, 1952, from Madera County, California.

I pleaded guilty. Date of sentence: May 9, 1952.

Length of sentence: 1-15 yrs. & 1-10 yrs. C.S.



## Exhibit A—(Continued)

Name of crime: Burg. 2nd. (459-P1) & Grand Theft (487-PC) CS.

When and where committed.....Fresno.

Case No. 2123.

## Previous Crimes

Photograph:

Height: 5 ft. 6½ ins.; Wt.: 135 lbs.; Eyes: Brown;  
Hair: Black; Complexion: Olive; Face: Round;  
Nose: Reg.; Mouth: Reg.; Id. marks: Tats., Left  
arm, upper, "RT"; Right arm, upper, "Duke."

/s/ LEONARD M. CRUZ,  
Alien's Signature.

Subscribed and sworn to before:

/s/ E. H. PRATHER,  
United States Immigrant  
Inspector. [31]

F. B. I. and California State C. I. I. Summary of Criminal Record as Compiled by the Identification Department, California State Prison, San Quentin, California: M 31—IOM 14; I 28—III 16.

Mexican: 5 ft. 8 ins. 142 lbs. Born in Mexico, 1933.  
Leonard Martinez Cruz. Alias: "Duke."

Cruz, Leonard M.



Exhibit A—(Continued)

Prison Number: A-21253.

F. B. I. Number: .....

C. I. I. Number: 668205.

Date: 11-27-51.

Department and Number: So. Madera, Calif.,  
No. 17087.

Charge: Mal. Misch.

Disposition: 12-7-51, 30 days. C. J.

Date: 3-21-52.

Department and Number: So. Madera, Calif.,  
No. 17087.

Charge: G. T.

Disposition: [Blank.]

Date: 5-14-52.

Department and Number: SPSQ., California,  
No. A-21253.

Charge: Burg. 2nd. (459-PC) & G. T. (487-  
PC).

Disposition: From Madera Co.; Term, 1-15  
yrs. & 1-10 yrs. CS.

C. V. BRENNAN,  
Identification Officer.

## Exhibit A—(Continued)

In the Superior Court of the State of California  
in and for the County of Madera

THE PEOPLE OF THE STATE OF CALIFOR-  
NIA,

Plaintiff,

vs.

LEONARD M. CRUZ, ROBERT ALVISO,  
FRANK MAESTAS, RICHARD RAMIREZ  
and CELERINO QUINTERO,

Defendants.

## INFORMATION

## Count One:

The District Attorney of the County of Madera, State of California, hereby accuses Leonard M. Cruz, Robert Alviso and Celerino Quintero of a felony, to wit, Burglary, in that on or about the 21st day of March, 1952, in the County of Madera, State of California, they did wilfully, feloniously and unlawfully enter a building identified as "Hartwig Motors," situate at 301 South "E" Street, in the City of Madera, County of Madera, State of California, with intent to commit larceny therein.

## Count Two:

And the District Attorney of the County of Madera, State of California, hereby further accuses Leonard M. Cruz, by this Second Count of this Information, of a felony, to wit: Grand Theft, in

Exhibit A—(Continued)

that on or about the 21st day of March, 1952, in the County of Madera, State of California, he did wilfully, feloniously and unlawfully take the property of the said A. J. Hartwig, consisting of a motor vehicle, to wit, a 1951 Dodge.

Count Three:

And the District Attorney of the County of Madera, State of California, hereby further accuses Robert Alviso, by this [33] Third Count of this Information, of a felony, to wit: Grand Theft, in that on or about the 21st day of March, 1952, in the County of Madera, State of California, he did wilfully, feloniously and unlawfully take the property of the said A. J. Hartwig, consisting of a motor vehicle, to wit: A 1950 Pontiac.

Count Four:

And the said District Attorney of the County of Madera, State of California, hereby further accuses Frank Maestas, by this Fourth Count of this Information, of a felony, to wit: Grand Theft, in that on or about the 21st day of March, 1952, in the County of Madera, State of California, he did wilfully, feloniously and unlawfully take the property of Dr. G. G. Daggett, consisting of a motor vehicle, to wit: A 1949 Cadillac.

Count Five:

And the said District Attorney of the County of Madera, State of California, hereby further ac-

## Exhibit A—(Continued)

cuses Richard Ramirez, by this Fifth Count of this Information, of a felony, to wit: Grand Theft, in that on or about the 21st day of March, 1952, in the County of Madera, State of California, he did wilfully, feloniously and unlawfully take the property of the said A. J. Hartwig, consisting of a motor vehicle, to wit: A 1942 Jeep.

## Count Six:

And the said District Attorney of the County of Madera, State of California, hereby further accuses Celerino Quintero, by this Sixth Count of this Information, of a felony, to wit: Grand Theft, in that on or about the 21st day of March, 1952, in the County of Madera, State of California, he did wilfully, feloniously and unlawfully take the property of the said A. J. Hartwig, consisting of a motor vehicle, to wit: A 1948 Pontiac.

## Count Seven:

And the said District Attorney of the County of Madera, State of California, hereby further accuses Frank Maestas and [34] Richard Ramirez, by this Seventh Count of this Information, of a felony, to wit: Violation of Subdivision "A" of Section 449 of the Penal Code of California, in that on or about the 21st day of March, 1952, in the County of Madera, State of California, they did wilfully and unlawfully and maliciously set fire to and did burn a certain motor vehicle, to wit: A 1949 Ford.

Exhibit A—(Continued)

And all of the acts alleged in Counts One, Two, Three, Four, Five, Six and Seven of this Information were connected together in their commission.

Dated: April 17, 1952.

WALTER CHANDLER,  
District Attorney for the County of Madera, State  
of California.

Certified true copy.

[Endorsed]: Filed April 17, 1952. (Superior  
Court.) [35]

In the Superior Court of the State of California  
in and for the County of Madera

Case No. 2123

ABSTRACT OF JUDGMENT

(Commitment to State Prison as Provided  
by Penal Code Section 1213.5)

THE PEOPLE OF THE STATE OF CALIFOR-  
NIA,

vs.

LEONARD M. CRUZ, ROBERT ALVISO,  
FRANK MAESTOS, RICHARD RAMIREZ  
and CELERINO QUINTERO,

Defendants.

## Exhibit A—(Continued)

HON. STANLEY MURRAY,  
(Judge of Superior Court.)

WALTER L. CHANDLER,  
(District Attorney.)

LOUIS W. CAPORALE, JR.,  
(Counsel for Defendant.)

This certifies that on the 9th day of May, 1952, judgment of conviction of the above-named defendant, Leonard M. Cruz, was entered as follows:

In Case No. 2123, Count No. 1, he was convicted by Court on his plea of Guilty of the crime of Burglary, in the Second Degree, as charged in the Information, in violation of Section 459 of the Penal Code of California.

Defendant was not charged and admitted being, or was found to have been armed with a deadly weapon at the time of commission of the offense, or a concealed deadly weapon at the time of his arrest within the meaning of Penal Code Sections 969c and 3024. [36]

This Certifies that on the 9th day of May, 1952, judgment of conviction of the above-named defendant was entered as follows:

In Case No. 2123, Count No. 2, he was convicted by Court on his plea of Guilty of the crime of Grand Theft in violation of Section 484 of the Penal Code of California.



Exhibit A—(Continued)

Defendant was not charged and admitted being, or was found to have been armed with a deadly weapon at the time of commission of the offense, or a concealed deadly weapon at the time of his arrest within the meaning of Penal Code Sections 969c and 3024. [37]

Defendant was not adjudged a habitual criminal within the meaning of Subdivision . . . . of Section 644 of the Penal Code; and the defendant is not a habitual criminal in accordance with Subdivision (c) of that Section.

It Is Therefore Ordered, Adjudged and Decreed that the said defendant be punished by imprisonment in the State Prison of the State of California for the term provided by law, and that he be remanded to the Sheriff of the County of Madera and by him delivered to the Director of Corrections of the State of California at the place hereinafter designated.

It is ordered that sentences shall be served in respect to one another as follows: Consecutively and not concurrently.

To the Sheriff of the County of Madera and to the  
Director of Corrections:

Pursuant to the aforesaid judgment, this is to command you, the said Sheriff, to deliver the above-named defendant into the custody of the Director



Exhibit A—(Continued)  
of Corrections at San Quentin at your earliest convenience.

Witness my hand and seal of said court this 9th day of May, 1952.

[Seal]                      ERMA E. CHEUVRONT,  
Clerk.

State of California,  
County of Madera—ss.

I do hereby certify the foregoing to be a true and correct abstract of the judgment duly made and entered on the minutes of the Superior Court in the above-entitled action as provided by Penal Code Section 1213.

Attest my hand and seal of the said Superior Court this 12th day of May, 1952.

[Seal]                      ERMA E. CHEUVRONT,  
County Clerk and Ex Officio Clerk of the Superior  
Court of the State of California in and for the  
County of Madera.

The Honorable:

STANLEY MURRAY,  
Judge of the Superior Court of the State of California, in and for the County of Madera.

Certified true copy.

[Endorsed]: Filed May 12, 1952. (Superior [38] Court.)

EXHIBIT B

AFFIDAVIT OF DETAINING OFFICER

State of California,  
County of Los Angeles—ss.

Robert H. Robinson, being duly sworn, deposes and says that:

Albert Del Guercio, named as one of the respondents in the foregoing action, has been detailed to duty in Washington, D. C., and is not presently serving as Officer in Charge, Immigration and Naturalization Service, Los Angeles, California;

That affiant is acting as Officer in Charge, Immigration and Naturalization Service, Los Angeles, California, and as such officer, is charged with the detention of the petitioner in the above-entitled action; that the petitioner is being held for deportation on a warrant issued pursuant to an order of the Board of Immigration Appeals, said decision being dated July 16, 1953; that affiant is the proper party to be named as respondent in the above-entitled action in the place and stead of Albert Del Guercio; that affiant has read the Return to Order to Show Cause and Answer to Petition for Writ of Habeas Corpus filed in this matter, and by reference incorporates the same herein as if set forth in full.

Dated: August 18th, 1955.

/s/ ROBERT H. ROBINSON,  
Affiant.

Subscribed and sworn to before me this 18th day of August, 1955.

[Seal]      /s/ JOHN A. CHILDRESS,  
Clerk, U. S. District Court;

By /s/ SAMUEL HOZMAN,  
Deputy Clerk. [39]

Affidavit of Service by Mail attached.

[Endorsed]: Filed Aug. 19, 1955.

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[Title of District Court and Cause.]

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above-entitled matter came on regularly for hearing upon the Return to Order to Show Cause on September 12, 1955, in the above-entitled Court before the Honorable William M. Byrne, Judge, presiding, without a jury. The Petitioner being present in person and represented by his attorney, Richard R. Cody, and the Respondents being represented by their attorneys, Laughlin E. Waters, United States Attorney; Max F. Deutz and Edwin H. Armstrong, Assistants United States Attorney, by Edwin H. Armstrong; and counsel for both Petitioner and Respondents having Stipulated that the certified record of the Deportation Proceedings relating to Petitioner attached to the Return as an Exhibit, is a true and correct copy of the Proceedings of Deportation and should be received in evi-

dence in the trial of the instant action, and the Court having received the same; and [41] counsel for both Petitioner and Respondents having Stipulated that it be deemed that the Writ of Habeas Corpus had issued and that the hearing on the Order to Show Cause is the hearing on the Writ, that the Return to the Order to Show Cause be deemed the Return to the Writ of Habeas Corpus, and that the Return to the Habeas Corpus had been traversed; and that the Petitioner was present in Court at the time of the hearing on the Order to Show Cause and Writ; and the Court having reviewed the aforementioned Record of Deportation Proceedings relating to Petitioner, and having heard evidence and considered the arguments of counsel, both written and oral, and having taken the matter under submission, now hereby make the following Findings of Fact and Conclusions of Law:

### Findings of Fact

#### I.

Petitioner, Leonard Cruz-Sanchez, is an alien, a native and citizen of Mexico.

#### II.

On June 27, 1952, a warrant of arrest was issued by the District Director, Immigration and Naturalization Service, Los Angeles, California, and served on July 21, 1952, charging that the Petitioner had been convicted and sentenced in this country of a crime involving moral turpitude committed within

five years after entry, to wit: Burglary, second degree, and grand theft. Said crimes being committed after May 1, 1917, and, further, that at the time of entry the immigrant was not in possession of a valid visa and not exempt from presentation thereof.

### III.

Pursuant to the aforementioned warrant of arrest, Deportation Hearings were held at the California Institution for Men at Chino, California, on March 5, 1953, and on that date the Special Inquiry Officer who presided at these hearings rendered [42] his decision, ordering that Petitioner be deported from the United States pursuant to law on the charge contained in the warrant of arrest.

### IV.

An administrative appeal was taken by Petitioner from said decision of the Special Inquiry Officer to the Board of Immigration Appeals and on July 16, 1953, said Board dismissed Petitioner's appeal.

### V.

On August 13, 1953, based upon the aforementioned Order of Deportation, a Warrant of Deportation was issued by the District Director, Immigration and Naturalization Service, Los Angeles, California, directing the deportation of Petitioner.

### VI.

The Special Inquiry Officer presiding at the aforementioned Deportation Hearings had jurisdiction and authority to act.



VII.

The Petitioner, Leonard Cruz-Sanchez, last entered the United States at Calexico, California, about March, 1950.

VIII.

There is reasonable, substantial, and probative evidence to support the decision of deportability, the Order of Deportation, and the Warrant of Deportation.

IX.

The Deportation Proceedings including the hearing and final order complied with the conditions and provisions of Section 242(b) of the Immigration and Nationality Act, 8 U.S.C. 1252(b).

X.

The Deportation Proceedings relating to the Petitioner were fair and in accord with his constitutional rights.

XI.

That Robert H. Robinson is the Officer in Charge of the [43] Immigration and Naturalization Service, Los Angeles, California, and as such has authority under the law and regulations to execute the Order of Deportation now outstanding against the Petitioner.

XII.

At the time of the hearing on the Order to Show Cause and the Writ of Habeas Corpus, the Petitioner, Leonard Cruz-Sanchez, was present in the Courtroom.

## Conclusions of Law

## I.

This Court has jurisdiction of the within cause under the provisions of Section 10 of the Act of June 11, 1946 (Administrative Procedure Act), 60 Stat. 243, 5 U.S.C.A., Section 1009.

## II.

There is reasonable, substantial and probative evidence to support the Order of Deportation against Petitioner, and the Deportation Proceedings relating to Petitioner were fair and in accord with his constitutional rights.

## III.

The Order of Deportation against Petitioner is valid and Petitioner is deportable under said Order.

## IV.

The Deportation Proceedings, including the hearing and final order complied with the conditions and provisions of Section 244(b) of the Immigration and Nationality Act, 8 U.S.C. 1252(b).

## V.

Judgment should be entered in favor of the Respondents and against the Petitioner denying the relief prayed for in Petitioner's Petition, and the Writ discharged.

Dated: This 22nd day of September, 1955.

/s/ W. M. BYRNE,

United States District [44]

Judge.



Presented by:

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant U. S. Attorney,  
Chief, Civil Division;

/s/ EDWIN H. ARMSTRONG,  
Assistant U. S. Attorney,  
Attorneys for Respondents.

Approved as to Form: Pursuant to Local Rule  
7(a) this 22nd day of September, 1955.

/s/ RICHARD R. CODY,  
Attorney for Petitioner.

[Endorsed]: Filed Sept. 22, 1955. [45]

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United States District Court, Southern District of  
California, Central Division  
Civil No. 18554-WB

LEONARD CRUZ-SANCHEZ,

Petitioner,

vs.

ALBERT DEL GUERCIO, Officer in Charge, Im-  
migration and Naturalization Service, Los An-  
geles, California; MERRIL O'TOOLE, Re-  
gional Commissioner, San Pedro, Calif.,

Respondents.

### JUDGMENT

The above-entitled matter came on regularly for  
trial on September 12, 1955, in the above-entitled

Court before the Honorable William M. Byrne, Judge, presiding, without a jury, the Petitioner being present in person and represented by his attorney, Richard R. Cody, and the Respondents being represented by their attorneys, Laughlin E. Waters, United States Attorney; Max F. Deutz and Edwin H. Armstrong, Assistants United States Attorney, by Edwin H. Armstrong; and counsel for both Petitioner and Respondents having Stipulated that the certified record of the Deportation Proceedings relating to the Petitioner should be received in evidence in the trial of the instant action, and the Court having received the same; and it having been Stipulated between counsel for Petitioner and counsel for Respondents that it be deemed that the Writ of Habeas Corpus had issued and that the hearing on the Order to Show Cause is the hearing on the Writ, [46] that the Return to the Order to Show Cause be deemed the Return to the Writ of Habeas Corpus, and that the Return to the Habeas Corpus had been traversed; and the Court having reviewed the aforementioned Record of Deportation Proceedings relating to Petitioner, and having heard and considered arguments of counsel, both written and oral, and having heretofore made and filed its Findings of Fact and Conclusions of Law,

It Is Hereby Ordered, Adjudged and Decreed as follows:

1. That the decision and Order of Deportation of the Special Inquiry Officer of March 5, 1953, re-

lating to Petitioner is valid and that Petitioner is deportable under the said Order.

2. That Judgment shall be entered in favor of Respondents and against the Petitioner denying the relief prayed for in the Petitioner's Petition, and discharging the Writ.

Dated: This 22nd day of September, 1955.

/s/ W. M. BYRNE,  
Judge, United States District  
Court.

Presented by:

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant U. S. Attorney,  
Chief, Civil Division;

/s/ EDWIN H. ARMSTRONG,  
Assistant U. S. Attorney,  
Attorneys for Respondents.

Approved as to Form: Pursuant to Rule 7(a)  
(Local Rules) this 22nd day of September, 1955.

/s/ RICHARD R. CODY,  
Attorney for Petitioner.

[Endorsed]: Filed, docketed and entered Sept.  
22, 1955. [47]

[Title of District Court and Cause.]

**ACTION FOR DECLARATORY JUDGMENT  
AND JUDICIAL REVIEW**

Comes now the Plaintiff and Petitioner above named and complains and alleges as follows:

**I.**

That this is an action for Declaratory Judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for the review of the final order of an administrative agency, to wit, the Immigration and Naturalization Service of the Department of Justice under the Administrative Procedure Act (5 U.S.C. 1001, et seq.).

**II.**

That the Plaintiff herein is 32 years of age, and is a native and citizen of Mexico, who last entered the United States at El Paso, Texas, during the year of 1923, when he was four months of age.

**III.**

That on June 4, 1952, Plaintiff was required to give a [48] statement before the Immigration and Naturalization Service at San Quentin, California, and at said time and place was not represented by counsel of his own choosing.

**IV.**

That as a result of said hearing, a Warrant of Arrest was issued by said Defendant and served on the Petitioner herein on July 21, 1952.

V.

That on March 5, 1953, Plaintiff was accorded a hearing to show cause as to why he should not be deported from the United States under the appropriate provisions of the Immigration and Naturalization Act of 1952.

VI.

That on the same date the Special Inquiry Officer rendered his decision ordering that Plaintiff be deported from the United States in the manner provided by law, on the charge contained on the Warrant of Arrest.

VII.

That no administrative appeal was taken by Plaintiff from this order due to his lack of knowledge and the fact that he was not fully informed of his rights in this matter.

VIII.

That the Deportation hearing held on March 5, 1953, and the Order of Deportation issued by the Special Inquiry Officer then presiding, was not based on reasonable, substantial, and probative evidence.

IX.

That said Deportation hearing was not fair and in accordance with Plaintiff's constitutional rights, in that the Warrant of Arrest upon which the Order of Deportation was based was issued upon the basis of a statement taken from Plaintiff in violation of his constitutional rights. [49]



## X.

That said deportation hearing was held when Petitioner was not represented by counsel of his own choosing, and, therefore, is a violation of his constitutional rights under the Fourteenth Amendment of the Constitution.

## XI.

That said hearing was held under such circumstances that Petitioner was placed under duress and fear, and was, therefore, a violation of his constitutional rights under the Fourteenth Amendment.

## XII.

Thereafter on August 15, 1955, petitioner filed an application for the issuance of a Writ of Habeas Corpus to test the validity of the Administrative proceedings referred to in this complaint and the Deportation Order issued March 5, 1953. Following the issuance of the Writ, a hearing was held on September 12, 1955, in the United States District Court for the Southern District of California; that following said hearing an order was signed and filed on September 22, 1955, by the Judge of said Court decreeing the validity of the deportation order, discharging the Writ, and denying relief to the petitioner.

## XIII.

That the Defendants herein are attempting to deport the Plaintiff from the United States in violation of his constitutional rights, and will do so unless this Honorable Court intervenes in his behalf.



Wherefore, Plaintiff prays for judgment as follows:

1. Declaring that the deportation hearing was unfair, null and void.
2. Declaring that the deportation order herein was null and void.
3. Declaring that the Plaintiff is not subject to [50] deportation on the basis of said hearing.
4. Restraining the Defendants and each of them, from taking Plaintiff into custody and deporting him.
5. Such other and further relief as to this Court may seem just and appropriate.

/s/ RICHARD R. CODY.

[Endorsed]: Filed Sept. 22, 1955. [51]

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[Title of District Court and Cause.]

NOTICE OF MOTION AND  
MOTION TO DISMISS

Notice of Motion

To the Petitioner Above Named and to Richard R. Cody, His Attorney:

You and Each of You Will Please Take Notice that the respondents, Robert Robinson and Merrill O'Toole, by and through the undersigned, will bring the following Motion to Dismiss on for hearing before the above-entitled Court, in the Courtroom of the Honorable William M. Byrne, United States District Judge, in the United States Post

Office and Courthouse Building, 312 North Spring Street, Los Angeles 12, California, on Monday, the 17th day of October, 1955, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard.

Dated: This 5th day of October, 1955. [53]

### Motion to Dismiss

Comes now the respondents, Robert Robinson and Merrill O'Toole, and moves this Honorable Court for the dismissal of the above-entitled action for the reason that this Court has no jurisdiction over the subject matter of this action. This motion is made pursuant to the authority set forth in the Federal Rules of Civil Procedure, Section 12(b)(1).

This Motion will be based upon the pleadings and the Memorandum of Law attached to this Motion.

Dated: This 5th day of October, 1955.

LAUGHLIN E. WATERS,  
United States Attorney;

MAX F. DEUTZ,  
Assistant U. S. Attorney,  
Chief, Civil Division;

EDWIN H. ARMSTRONG,  
Assistant U. S. Attorney;

/s/ EDWIN H. ARMSTRONG,  
Attorneys for Respondents.

[Endorsed]: Filed Oct. 5, 1955. [54]

United States District Court, Southern District of  
California, Central Division

Civil No. 18785-WB

LEONARD CRUZ-SANCHEZ,

Petitioner,

vs.

ROBERT ROBINSON, Officer in Charge, Immigration and Naturalization Service, Los Angeles, California; MERRIL O'TOOLE, Regional Commissioner, San Pedro, California,

Respondents.

### ORDER OF DISMISSAL

The above-entitled matter came on regularly for hearing on respondents' Motion to Dismiss on October 17, 1955, before the Honorable William M. Byrne, Judge, presiding. The petitioner being represented by his attorney, Richard R. Cody, and the respondents being represented by their attorneys, Laughlin E. Waters, United States Attorney; Max F. Deutz and Edwin H. Armstrong, Assistants United States Attorney, by Edwin H. Armstrong, and having considered the respondents' motion memoranda of counsel in regard thereto, together with all the records and files herein; and the Court having taken said motion under submission, and being fully advised in the premises;

Now, Therefore, It is Hereby Ordered that the Petition for Declaratory Judgment and Judicial

Review on file herein be and same is hereby dismissed for failure to set forth a claim upon [62] which relief can be granted [Rule 12(b)(6), Federal Rules of Civil Procedure].

Dated: This 16th day of December, 1955.

/s/ W. M. BYRNE,

United States District Judge.

Affidavit of Service by Mail attached.

Lodged Nov. 28, 1955.

[Endorsed]: Filed, docketed and entered Dec. 16, 1955. [63]

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice is hereby given that Leonard Cruz-Sanchez, Petitioner, above named, hereby appeals to the Court of Appeals for the 9th Circuit from the Order of Dismissal entered in this Action on the 16th day of December, 1955, in favor of Respondents and against the Petitioner.

Dated: Dec. 20, 1955.

/s/ RICHARD R. CODY,

Attorney at Law.

[Endorsed]: Filed Dec. 20, 1955. [65]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages, numbered 1 to 261, inclusive, contain the original:

Petition for Writ of Habeas Corpus (18554-WB);

Order to Show Cause (18554-WB);

Return to Order to Show Cause (18554-WB);

Findings of Fact and Conclusions of Law (18554-WB);

Judgment (18554-WB);

Action for Declaratory Judgment and Judicial Review (18785-WB);

Motion and Notice of Motion to Dismiss (18785-WB);

Opposition to Motion to Dismiss (18785-WB);

Order of Dismissal (18785-WB);

Notice of Appeal (18785-WB);

Affidavit for Additional Time to Docket Appeal (18785-WB);

Designation of Record on Appeal (18785-WB);

Counter-Designation of Record on Appeal (18785-WB);

Amended Counter-Designation of Record on Appeal (18785-WB);

constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said cause.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellants.

Witness my hand and the seal of said District Court, this 9th day of February, 1956.

[Seal]                      JOHN A. CHILDRESS,  
Clerk;

By /s/ CHARLES E. JONES,  
Deputy.

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[Endorsed]: No. 15037. United States Court of Appeals for the Ninth Circuit. Leonard Cruz-Sanchez, Appellant, vs. Robert Robinson, Officer in Charge, Immigration and Naturalization Service, Los Angeles, California, and Merrill O'Toole, Regional Commissioner, San Pedro, California, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed February 20, 1956.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for the  
Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

No. 15037

LEONARD CRUZ-SANCHEZ,

Petitioner,

vs.

ROBERT ROBINSON, Officer in Charge, Immigration and Naturalization Service, Los Angeles, California; MERRIL O'TOOLE, Regional Commissioner, San Pedro, California,

Respondents.

STATEMENT OF POINTS  
ON APPEAL

Pursuant to Rule 75 (d) of the Rules of Civil Procedure, the Petitioner-Appellant hereby states the points on which he intends to rely on his appeal from the final judgment herein as follows:

“Habeas Corpus Not Exclusive Relief From Administrative Order of Deportation.”

“Denial of Habeas Corpus No Bar Nor Does It Estop Relief Under Section 10 of Administrative Procedure Act.”

“Relief of Judicial Review of Order of Deportation Is Grant by Congress to Alien in Addition to Habeas Corpus Provided by Constitu-

# THE HISTORY OF THE UNITED STATES

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Co. 15037

IN THE

UNITED STATES COURT OF APPEALS

For the Ninth Circuit

LEONARD CRUZ-SANCHEZ,

Appellant,

VS

ROBERT ROBINSON,

Appellee.

---

Appeal from the United States District Court for the  
Southern District of California, Central Division.

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APPELLANT'S OPENING BRIEF.

---

STATEMENT OF PLEADINGS AND JURISDICTIONAL FACTS

A verified petition entitled "PETITION FOR  
WRIT OF HABEAS CORPUS" was filed August 15, 1953,  
in the District Court for the Southern District of



Service, Los Angeles, California; and MERRILL O'TOOLE,  
Regional Commissioner, San Pedro, California.

The Petition alleged that an order of Deportation for the Petitioner's deportation had been issued that he feared that he would be deported from the United States without due process of law. (4). Further that petitioner did not receive notice of his impending deportation until all numbers in brackets refer to pages in transcript August 10, 1955; and that petitioner had been unable to secure or retain Counsel for the purpose of examining the record or file in his case.

On the basis of the petition filed, in order to show cause was issued and served on appellee by which said appellee was required to show cause why a writ of habeas corpus should not issue as prayed by said petition. (5).

The return to the order to show cause and answer

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Findings of fact and conclusions of law were made and a judgment was entered in favor of respondents and against the Petitioner denying the relief prayed for in Petitioner's Petition, and the Writ discharged. (62).

On September 22, 1956, Petitioner herein filed an action entitled "ACTION FOR DECLARATORY JUDGMENT AND JUDICIAL REVIEW". (66). In this petition Petitioner alleged the jurisdictional facts under the Declaratory Judgments Act (Act of June 14, 1934, as amended, Title 28, U.S.C.A. 2201, et seq.) (66).

The complaint alleged that on June 4, 1952, Plaintiff was required to give a statement before the Immigration and Naturalization Service at San Quentin, California, and at said time and place was not represented by counsel of his own choosing. (66).

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was based on an unfair hearing. (67). That said hearing was held under such circumstances that Petitioner was placed under duress and fear, and was therefore, a violation of his constitutional rights under the Fourteenth Amendment to the Constitution of the United States. (68).

On December 16, 1955 appelle filed his Notice of Motion to Dismiss, etc. (60-70), pursuant to Rule 12(b) (1), Federal Rules of Civil Procedure on the grounds that the Court had no jurisdiction over the subject matter of the action.

The Honorable Wm. M. Bryne, District Judge, granted the motion to dismiss and made and signed the Order of Dismissal on ground of failure to set forth a claim upon which relief can be granted (Rule 12(b) (6), Federal Rules of Civil Procedure). (72).

The United States Court of Appeals for the Ninth.

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# STATEMENT OF THE CASE

Appellant was born in Mexico, of which country he is a national. He was first admitted to the United States as a child of a few months of age in 1933. He has resided continuously in the United States since that time except for a brief visit of a few hours to Mexico prior to his last entry. His last entry which was not verified was claimed to be March, 1950, at Calexico, California. It was on the basis of this entry that the Immigration Service charged that he was deportable from the United States in that he entered with an Immigration visa and that he had been convicted of crime and sentenced to imprisonment for one year within five years after entry.

The record shows that the appellant pleaded guilty in the Superior Court of the State of California, in and for the County of Madera, to the



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On July 21, 1952, the appellant was served with a Warrant for his Arrest by E. T. PRATHER, an investigator of the Immigration Service while he was serving time on the above mentioned offense. (42-44).

On December 30, 1952, while still in custody of the State authorities, appellant received a registered letter which advised him that pursuant to the warrant of arrest served on July 21, 1952, he was to appear in the California State Prison, Chino, California, on January 26, 1952 at 10:30 a.m., for a hearing to enable him to show cause why he should not be deported from the United States in conformity with law. (32).

The hearing was finally held on March 5, 1953 at the California Institute for Men, Chino, California, and is set forth in full on Page 34 of the record.



must have been considerable discussion concerning the case between the appellant and the hearing officer that does not appear on the record of the hearing. (36).

It was on the basis of this hearing that the Warrant of Deportation was issued.

Since the appellant was in immediate danger of being deported under said order, attorney for appellant filed the petition for the Writ of Habeas Corpus as mentioned heretofore. After the District Court discharged the Writ and denied relief to the petitioner, the action for Declaratory Judgment was filed and subsequently dismissed as heretofore set out.

#### SPECIFICATIONS OF ERROR

The appellant makes the following specifications of error of the District Court:

##### I.

The District Court erred in making said judgment



provisions of the Administrative procedure Act in addition to the Constitutional relief of habeas corpus because of the extreme limitations of review in the latter and its desire to insure aliens a full and complete opportunity to secure justice and avoid deportation of worthy aliens victims of error and deception.

### III.

The District Court erred in dissolving the temporary restraining order because in so doing it denied appellant the right to secure relief while at liberty as Congress provided.

### ARGUMENT

HABEAS CORPUS NOT EXCLUSIVE RELIEF FROM ADMINISTRATIVE ORDER OF DEPORTATION.

DENIAL OF HABEAS CORPUS NO BAR NOT DOES IT STOP RELIEF UNDER SECTION 10 OF ADMINISTRATIVE PROCEDURE ACT.

RELIEF OF JUDICIAL REVIEW OF ORDER OF DEPORTATION IS GRANTED BY CONGRESS TO ALIEN IN ADMINISTRATIVE PROCEDURE ACT.

RELIEF OF JUDICIAL REVIEW OF ORDER OF DEPORTATION IS GRANTED BY CONGRESS TO ALIEN IN ADMINISTRATIVE PROCEDURE ACT.

RELIEF OF JUDICIAL REVIEW OF ORDER OF DEPORTATION IS GRANTED BY CONGRESS TO ALIEN IN ADMINISTRATIVE PROCEDURE ACT.





ure Act of 1946 (Act of June 11, 1946, 60 Stat. 237, et seq.), the only legal procedure available to an alien to test the validity of an administrative order of deportation was petition for writ of habeas corpus, Bridges vs Dixon, 326, U.S. 133, a right guaranteed by Art. I, Sec 9, Clause 2, of the Constitution which reads: "The privilege of the Writ of Habeas Corpus shall not be suspended...". The review, traditionally limited, primarily related to a determination of due process. Eagles vs Samuels, 349 U.S. 304, 511.

Sung vs McGrath, 339 U.S. 53, held that the Administrative procedure Act, supra, was applicable to deportation cases. Thereupon, Congress expressed its will, intention and purpose by exempting proceedings before the Immigration Service from provisions of Sections 3, 7, and 8 of the Administrative Procedure Act (84 Stat. 1048), hereinafter designated as the APA for convenience of all. This exemption by Congress was in accord with Section 12 of the APA "...No subsequent legislation shall be held to supersede or modify the provisions of

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General to deport an alien. However, Heikkila was specifically not a ruling on the 1952 Immigration and Naturalization Act (65 Stat. 163), see Heikkila v. Barber, supra, footnote 4.

Pedreiro v. Shughnessy, 347 U.S. 48, has held that an alien may, under the 1952 Act, secure injunctive relief under the provisions of Section 10 of AIA, supra. The remedy, said the Supreme Court is an appropriate one and an alien is not limited to review by habeas corpus. It is further held that the Attorney General was not an indispensable party to the action.

Moreover, Pedreiro declared that a second action would not injure the Government, but, sub silentio, could assist an alien.

The foregoing brief chronology shows that we must presume that Congress originally intended to grant judicial review to aliens in record with AIA; changed its mind by specifically withdrawing the privilege, supra; and then in the 1952 Act, Congress reinstated the privilege.

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llant's complaint is concerned, that, as of September 22, 1955, the date of its filing (69), the Supreme Court has decreed that the existing will, purpose and intention of Congress was to extend the relief of judicial review.

Pedreiro v. Chungueisy, supra. It follows the trial court had jurisdiction, providing that appellant was not barred or estopped from asserting same by the prior adverse ruling on his habeas corpus petition.

When the APA was enacted in 1946, the Constitutional guarantee of habeas corpus, supra, was available. It was available continuously during the period such Congress was wavering in its position. It would be preposterous for anyone to argue that Congress was mindful of the Constitutional guarantee or that Congress intended to substitute judicial review under APA for the review required by the Constitution.

It is the intention of Congress under the APA Act, supra, to grant an appeal the additional remedy of judicial review and innovative relief under Section 10 of the APA.

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"1. In view of the fact that every person who is ordered deported has all these administrative, procedures available, plus an appeal to the court, plus the right to a writ of habeas corpus..."

Congressman Walters, 94 Cong. Rec. 4415, 4416.

"The Administrative Procedure Act is made applicable to this bill. The A.P.A. prevails now."

Senator McCarren, 95 Cong. Rec. 3778.

Appellant's action for judicial review and injunction was filed in accord with the purpose and intention of Congress expressed both in the enacting and passage thereof.

Said law did not suspend the rights of habeas corpus nor could it; said law did not create the situation where two remedies were available, requiring an election, nor could it; said law did not state which procedure should come first as that would have to be determined by the originaries of each deportation matter.

It is elementary that the judiciary does not have to

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residence, where the doctrine of res judicata or any form of bar would be inconsistent with the expressed will of Congress (cf. Pedreño, supra) or the method devised and enacted by Congress, the doctrine will not be enforced by the courts. Denver Bldg. Trades v. McClain, Inc., 136 F.2d 326; reversed on other grounds in 341 U.S. 675.

When appellant filed his complaint, he was seeking a judicial review which applied a statutory standard of review which required the reviewing court to determine from the whole record whether there was substantial evidence to warrant the order of deportation. To the scope of review, Congress says he is entitled and the Supreme Court has approved.

Pedreño v. INS, 341 U.S. 675.

Aristodemus v. McGrath, 340 U.S. 163.

Universal Camera Co. v. N.Y. City, 344 U.S. 334.

Goldstein v. Miller, 343 U.S. 256, 258.

The variety of the allegations of unconstitutional practices will be established beyond question by the scope of review required under section 10 of the Administrative Procedures

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No. 15037

IN THE

# United States Court of Appeals

FOR THE NINTH CIRCUIT

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LEONARD CRUZ-SANCHEZ,

*Appellant,*

*vs.*

ROBERT ROBINSON, Officer in Charge, Immigration and  
Naturalization Service, Los Angeles, California, MER-  
RIL O'TOOLE, Regional Commissioner, San Pedro Cali-  
fornia,

*Appellees.*

---

## BRIEF FOR APPELLEES.

---

LAUGHLIN E. WATERS,  
*United States Attorney,*

MAX F. DEUTZ,  
*Assistant United States Attorney,*  
*Chief, Civil Division,*

EDWIN H. ARMSTRONG,  
*Assistant United States Attorney,*

600 Federal Building,  
Los Angeles 12, California,

*Attorneys for Appellees.*

FILED

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PAUL P. O'BRIEN, CLERK

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